



December 17, 2020

Biden-Harris Transition
1401 Constitution Ave NW
Washington, DC 20230

Dear President-elect Biden, Vice President-elect Harris, and members of the transition team:

People For the American Way offers you our warmest and most sincere congratulations on your historic victory in November. The American people voted overwhelmingly for change, and we are profoundly grateful for the opportunity to enter a new era of progress. At the same time, we are acutely aware of the challenges ahead.

The new Biden-Harris administration will enter office at a fraught time, one that is beset with serious dangers to our health and our democracy. Many Americans have felt their faith in our country shaken to the core. This current moment demands healing even as it holds promise. We have important opportunities now for our nation to unite and improve justice and opportunity for all, and it is critical that we not squander them. People For the American Way will do everything in our power to work with you and your Administration on ways to address the many problems confronting our nation.

While some problems will require legislation to most effectively address them in the long term, the president has the constitutional and statutory authority to take a variety of executive actions to immediately end unacceptable injustices. The president must use this power to make substantial and much-needed improvements to the lives of people who are currently suffering. We believe the following actions, achievable largely via executive authority alone, are vital first steps toward our shared long-term goals.

Prioritize the Nomination and Confirmation of Judges

For several decades, the far right has recognized the paramount importance of the courts and prioritized the takeover of the federal judiciary. Especially under the influence of Trump judges and justices, the nation has seen the consequences: law enforcement officials use deadly force against Black Americans without being held accountable; laws making it harder for people of color to vote are upheld; burdens on the lives of immigrants are upheld; people are denied access to legally protected health care, including abortion care; working people are prevented from effectively getting higher wages and better working conditions; companies are protected when they discriminate against employees; and much more.

Conservatives established their goal of transforming the courts decades ago, because they saw how those courts, when functioning properly, can empower the marginalized and protect individuals and communities from being victimized by those more powerful than they. From the

1930s-1980s, federal courts drove a stake into Jim Crow when elected officials were still standing in the schoolhouse door; held that people arrested by the police have a right to an attorney; imposed much-needed limitations on abuses by law enforcement; prevented states from criminalizing private decisions such as those involving abortion and contraception; recognized our right to impose reasonable limits on corporations' treatment of working people, the safety of consumer products, and manufacturing's effects on the quality of our air and water; and much more.

We need to return to this vision of the courts, because the rights enshrined in our Constitution and our laws mean nothing without judges committed to making them real. We therefore urge the Biden administration to prioritize the nomination and confirmation of fair-minded judges who recognize that the law should protect all of us, not just the powerful. Specifically, the president should:

- Quickly and publicly commit to promptly nominating to the federal courts fair-minded individuals who have a demonstrated commitment to civil and human rights, since protecting those rights is the primary reason our courts exist.
- Ensure that nominees reflect demographic, professional, and experiential diversity. To achieve justice and fairness and to be seen as legitimate, judges must understand the lived experiences of those whose cases come before them.
- Hold a public press conference to announce the first slate of judicial nominees and use the opportunity to highlight the administration's commitment to fair and just courts and to educate members of the public on the role courts play in their lives.
- Do not delay the nomination process by giving the ABA a privileged role before nomination. The organization has a history of undervaluing certain types of legal experience and therefore giving flawed, lower ratings for demographically and experientially diverse nominees. In addition, waiting before nomination for the ABA process to be complete will delay nominations. The ABA's evaluation of a nominee is best considered and discussed at the hearing stage of the confirmation process.
- Establish that there cannot be one set of rules for a Democratic president's nominees and another for a Republican's, by insisting that the Senate not reimpose pre-Trump rules and practices that would delay full and timely consideration of President Biden's judicial nominees. Most importantly, the White House should announce that it will make circuit court nominations and insist on their prompt consideration regardless of home state senators' support. In addition, the administration should oppose any effort within the Senate to reimpose super-majority cloture requirements for any judicial nominees and should make it a priority to push for prompt Senate consideration of its nominees.

Protect and Improve Our Democracy

Many observers have characterized the defeat of President Trump as our democracy “dodging a bullet.” But to extend the metaphor, we must recognize that dangerous forces “haven’t stopped shooting.” Even with Trump’s defeat, our democracy is under sustained attack from multiple sources in multiple ways. The incoming administration can take action on several fronts to protect and strengthen our democracy and make it live up to our national ideals. The new administration must:

- Restore the 2020 Census to its constitutional requirement to be an enumeration of all residents, by rescinding: (1) Executive Order 13880, “Collecting Information about Citizenship Status in Connection with the Decennial Census” (July 11, 2019); and (2) the Presidential Memorandum on “Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census” (July 21, 2020). Efforts to exclude undocumented individuals from apportionment calculations violate the language of the Constitution and the constitutional principle that all people deserve representation. It would also weaken the political power of communities that are already targeted for disenfranchisement, making it even harder for them to defend themselves.
- Restore the Justice Department as the nation’s primary protector of voting rights, by aggressively enforcing the prohibitions against discrimination in Section 2 of the Voting Rights Act (VRA). Respond to repeated state and local government efforts to restrict voting rights by pursuing “bail-in” preclearance requirements to the extent available under Section 3(c) of the VRA. Vigorously ensure states comply with their obligations under the National Voter Registration Act (NVRA) to provide voter registration information to individuals interacting with the state for public assistance, disability services, and driver’s licenses. Ensure that any state purge of voter rolls complies with the NVRA’s voter protection safeguards.
- Issue an order directing federal agencies to determine how they can best facilitate voter registration among the people they serve. Millions of Americans lack information on how to register, or they face daunting economic obstacles to spending the time and resources needed to register. Much of this population also interacts with federal assistance programs. Communities that do not vote make easy targets for anti-democratic and racially-motivated efforts to reduce or eliminate the federal resources that many people need to survive and thrive.

A Call to Conscience: Reunite Immigrant Families Separated by Trump’s “Zero Tolerance” Policies and End Other Cruel Immigration Policies

Few activities of the Trump administration generated more horror than its morally bankrupt policy at the border, which tore families apart and effectively orphaned hundreds of migrant

children. To address this horrendous failing along with other deliberately cruel immigration policies perpetrated under Trump, the new administration should:

- Take whatever steps are necessary to reunite the children and families intentionally targeted by the Trump administration’s cruel and inhuman immigrant family-separation policy. The administration should ensure that all federal departments and agencies fully cooperate with each other, with other countries, and with non-governmental organizations to locate and reunite the affected parents and children. This includes allowing lawful entry into the country of those parents who are no longer within the United States.
- Fully resume the Deferred Action for Childhood Arrivals (DACA) program, rescind executive orders and policies establishing and implementing the previous administration’s Muslim immigration ban, and rescind the previous administration’s unlawful changes to the immigration “public charge” rule.
- Rescind the Trump administration’s changes to Temporary Protected Status (TPS) protection, which are tainted by the overt racism of the president and senior members of his administration.
- Rescind the Trump administration’s cruel escalations in enforcement actions and impose a temporary freeze on deportations.

End Other Trump Policies That Advance White Supremacy and Other Forms of Bigotry and Condone Police Misconduct

After running a campaign based on white nationalism, Donald Trump used his presidency to elevate its adherents and target Black, Latino, Muslim, and LGBTQ+ communities. The Justice Department abandoned its legal and moral duty to safeguard civil rights, especially for people of color and other marginalized Americans. Immigration policy became a weapon to stigmatize those not born here and add burden upon burden to their lives. His administration transformed religious liberty from a shield to protect religious exercise into a sword to deprive others of their legal rights. And in his very first days in office, he adopted a euphemistically labeled “travel ban” that in reality was the Muslim ban he had vowed to institute during the 2016 campaign. The new administration must:

- Restore and pursue internal Justice Department procedures authorizing the Civil Rights Division to vigorously investigate, and use consent decrees to end, illegal abuses by state and local law enforcement entities.
- Suspend federal programs that militarize law enforcement and criminalize Black and Brown communities, including the Defense Department’s 1033 Program and the Justice Department’s Operation Legend and Operation Relentless Pursuit.

- Require all federal law enforcement agencies to collect and analyze data on stops, searches, arrests, and uses of force. Direct the Justice Department to create a centralized database making this data and subsequent analysis freely available to the public.
- Direct the Justice Department to explore legal options for limiting or ending the judicially-created doctrine of qualified immunity, which has been used to insulate law enforcement and other government officials from liability for serious misconduct.
- Issue guidance establishing a necessary use of force standard that allows police use of force only as a last resort.
- Sign a Presidential executive order directing federal agencies to correctly apply the Free Exercise Clause and federal statutes such as the Religious Freedom Restoration Act, setting forth the government’s compelling interest in upholding protections for civil rights and access to health care, and recognizing religious liberty as a shield to protect religious exercise rather than as a sword to harm others.
- Rescind the Trump administration’s Executive Order 13950 (Sept. 23, 2020), which is purportedly about “Combating Race and Sex Stereotyping,” but which in fact suppresses anti-bias efforts by federal agencies, contractors, and grantees to advance diversity, equity, and inclusion. The order shuts down the very conversations and actions that are necessary if we are to eliminate the toxic inequities in our society.

Sincerely,

Ben Jealous
President